

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXX**

**Petitioner**

**v**

**File No. 123428-001**

**Blue Care Network of Michigan**

**Respondent**

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**Issued and entered**  
**this 17<sup>th</sup> day of January 2012**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On September 16, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner immediately notified Blue Care Network of Michigan (BCN) of the request and asked for the information it used to make its adverse determination. The Commissioner received BCN's response on September 19, 2011. After a preliminary review of the material submitted, the Commissioner accepted the request for external review on September 23, 2011. BCN provided additional information on September 28, 2011.

The issue in this external review can be decided by an analysis of the certificate and its rider. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner was enrolled in BCN's Healthy Living program in 2007. With its *Healthy Living Rider* (the rider), BCN offers a program designed to promote or maintain good health and/or prevent disease or the progression of disease for members in the Program. Under the rider, members who adopt or maintain healthier behaviors receive "enhanced" benefits in the form of lower copayments, coinsurance, and deductibles. In order to receive the enhanced benefits, a member must submit a "health assessment" form to BCN by a specified deadline.

On January 1, 2011, the Petitioner was conditionally re-enrolled in the *Healthy Living*

program with enhanced benefits. The Petitioner was required to submit her health assessment form by March 31, 2011. In addition, she was required to enroll in a free weight management program because her body mass index (BMI) was greater than 30. Petitioner did not meet these requirements. Consequently, on April 1, 2011, she was placed in the standard benefits plan.

Petitioner submitted her health assessment form during the second chance enrollment period on April 18, 2011, but because she still did not enroll in a weight management program, her coverage remained at the standard level.

The Petitioner appealed BCN's decision to terminate her from the enhanced benefits plan. At the conclusion of the internal grievance process, BCN issued its final adverse determination letter dated July 26, 2011.

### **III. ISSUE**

Did BCN properly deny the Petitioner continued participation in the enhanced benefits plan?

### **IV. ANALYSIS**

#### Petitioner's Argument

The Petitioner states that she was never informed that she was required to join a weight management program. Petitioner states that even if it was a requirement, she could not participate in such a program at that time because she was taking medication to prevent seizures and therefore could not drive anywhere by law. The Petitioner also states that she has been taking steps toward losing weight and has progressed toward meeting her goal of having a BMI less than 30.

Petitioner indicates she experienced a medical emergency on April 23, 2011, and had follow-up doctor appointments while receiving the standard benefit coverage, which has led to increased out-of-pocket medical expenses. The Petitioner wants BCN to restore her to the enhanced benefits plan with an April 1, 2011 retroactive effective date.

#### Respondent's Argument

In its final adverse determination BCN wrote:

. . . [I]t was determined that you did not enroll in one of our weight management programs by March 31, 2011. Therefore, we have maintained our decision, and your contract will remain in the standard benefit level. You may re-apply for our enhanced benefit at your next open enrollment.

To clarify further, your Body Mass Index (BMI) was calculated at 30 and greater. Per the HBL plan requirements, you were required to join one of our weight management programs, Weight Watchers or Walking Spree Pocket Pedometer. These findings were based on the February 15, 2011 qualification form (QF) completed by your primary care physician.

### Commissioner's Review

Under Michigan law, health maintenance organizations are permitted to offer wellness programs which provide for reduced copayments, coinsurance, and/or deductibles if certain conditions are met. Section 3426(1) of the Insurance Code, MCL 500.3426(1), provides:

Each insurer providing a group expense-incurred hospital, medical, or surgical certificate delivered, issued for delivery, or renewed in this state and each health maintenance organization may offer group wellness coverage. Wellness coverage may provide for an appropriate rebate or reduction in premiums or for reduced copayments, coinsurance, or deductibles, or a combination of these incentives, for participation in any health behavior wellness, maintenance, or improvement program offered by the employer.

As a condition of joining or remaining in BCN's wellness program, a BCN member must meet requirements specified in the rider:

#### **HOW TO EARN THE HEALTHY LIVING ENHANCED BENEFITS IN THE FIRST YEAR OF ENROLLMENT**

Upon enrollment each Healthy Living Eligible Member will receive Enhanced Benefits for a 90-day period. To continue receiving the Enhanced Benefits each Healthy Living eligible Member must take the following steps:

1. Within 90 days of enrollment each Healthy Living Eligible Member must complete a Health Risk Assessment (HRA) and a Healthy Living Enrollment Form which will assess the Member's medical condition and/or lifestyle behavior in relation to the following areas:

- Blood pressure
- Smoking
- Cholesterol
- Blood sugar
- Weight
- Alcohol use

2. In order to earn the Enhanced Benefits, Healthy Living Eligible Members must achieve a score of 80 points or more on the Healthy Living Enrollment Form. Scores are based upon a combined assessment of the Member's current medical condition and/or lifestyle behavior and the member's commitment to comply with the conditions of programs and behaviors recommended by their primary care physician and BCN. The results of the Healthy Living Enrollment Form must be reviewed with and signed by the Member's primary care physician. The results must be submitted to BCN within the 90-day time period.

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#### **HOW TO EARN THE HEALTHY LIVING ENHANCED BENEFITS IN SUBSEQUENT YEARS OF ENROLLMENT**

Healthy Living Eligible Members who have qualified to earn Enhanced Benefits in their preceding year may continue to earn Enhanced Benefits by following the steps outlined in "How to Earn the Healthy Living Enhanced Benefits in the First year of Enrollment", above. These steps will begin on the date of renewal of each year of enrollment.

In addition to the requirements specified in the rider, BCN requires members who have a BMI 30 or greater to "actively participate" in a weight management program by participating in one of its approved programs (Weight Watchers or the Walking Spree pedometer-based walking program) within 120 days from the start of the plan year for which they can participate for free. The members must start participating in their selected program within one week of registration.

The Petitioner does not dispute that she failed to submit the required health assessment form by the deadline. The Petitioner claims that she did not have knowledge of this requirement and even if she did would not be able to participate due to health issues she was experiencing that did not allow her to drive. BCN asserts that it sent a reminder letter and transmitted a voice message to Petitioner on November 18, 2010, January 6, 2011, and February 10, 2011. In addition, in a Step 1 grievance letter dated July 1, 2011, submitted for this external review, BCN explained that Petitioner had the option of submitting a medical waiver if she could not participate in a weight management program.

The Commissioner finds that BCN was correct in ruling that the Petitioner was not eligible for participation in the *Healthy Living* enhanced benefits plan. The decision was consistent with the conditions stated in the *Health Living* rider.

#### **V. ORDER**

The Commissioner upholds Blue Care Network of Michigan's final adverse determination of July 26, 2011. BCN is not required to restore the Petitioner to the enhanced benefit level for the April 1, 2011, plan year.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner